



# DOING BUSINESS IN BRAZIL

FROM A LABOR  
PERSPECTIVE

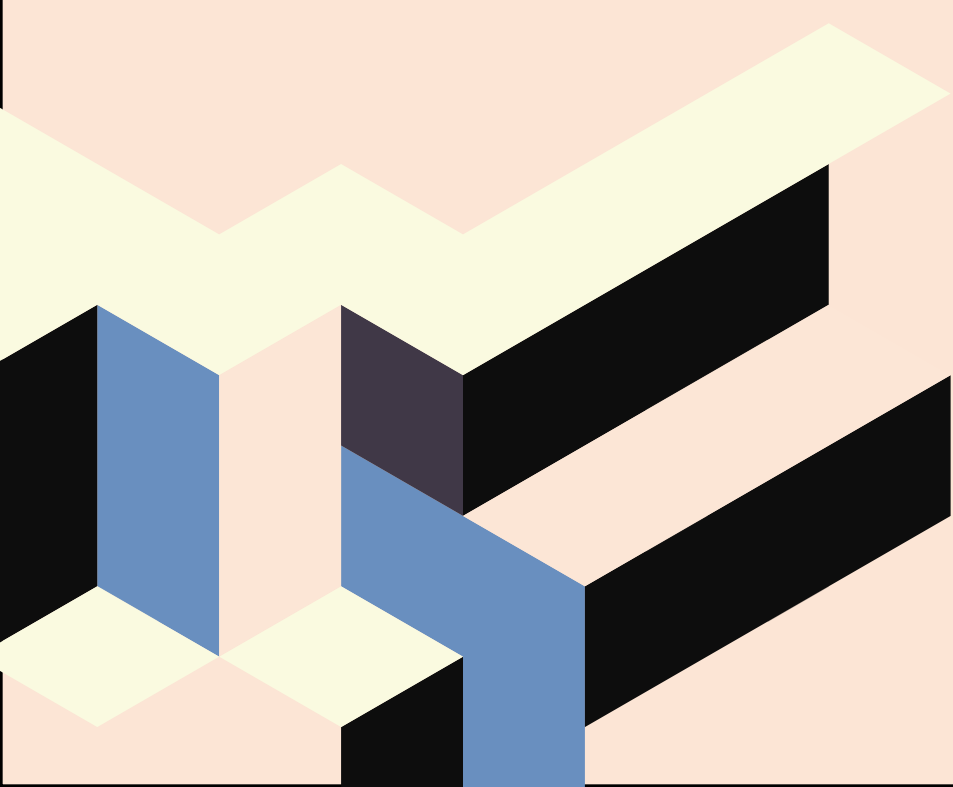
BAPTISTALUZ

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# ABOUT US

Founded in 2004, Baptista Luz Advogados is a full-service legal boutique that covers all areas of Corporate Law, with prominent practices in diverse sectors of the economy, such as technology, internet, financial institutions, advertising, entertainment, real estate, transportation, retail, and agribusiness, among others. We have extensive experience with cross-border negotiations, and our branches are present in four different Brazilian cities: São Paulo, Florianópolis, Porto Alegre, and Londrina.



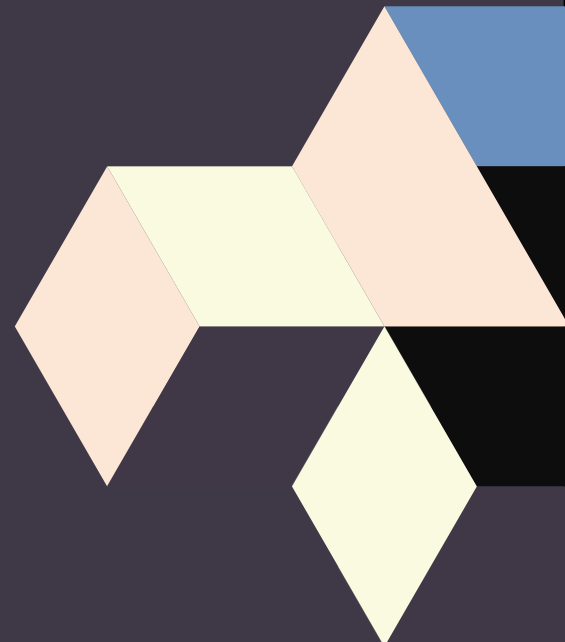
# ABOUT THIS GUIDE

## Labor and Employment Matters

In Brazil, labor and employment matters are ruled by Federal Constitution and Brazilian Labor Code (Consolidação das Leis do Trabalho – “CLT”), which are supplemented by other federal, state, municipal and social security legislations, court decisions and collective bargaining and collective labor agreements.

Therefore, this doing business intends to provide an overview of employment and labor law regarding the most important topics to do business in Brazil.

Furthermore, it is important to point out that besides the strong labor and employment legislation in force in Brazil, according to Brazilian labor principles, factual findings also play an important role throughout employment rights, since they are often more important than formal documents to establishing employees’ rights and obligations.



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## 1. GOVERNING LAW

Any labor contract is governed by the law of the country in which the services are rendered, according to the territoriality principle or *lex loci executionis*. Thus, if all workers are based in Brazil and perform their activities in Brazil, they are all subject to Brazilian legislation.

However, if services are rendered part in Brazil and part abroad, Brazilian law may be applicable depending on factual findings. The issue such as whether Brazilian law is or is not the governing law is based primarily on where the activities are performed. Facts are therefore essential to establish whether an activity is performed in Brazil or abroad, especially in a case of remote working.

In this sense, Law No. 7,064/1982 sets forth rights applicable to employees of Brazilian companies working abroad. Such rights include employment rights in the jurisdiction where the work is being carried out, and any right under Brazilian Law, whichever is more beneficial to the employee.

## 2. LABOR AND EMPLOYMENT LAW APPLICABLE TO EMPLOYEES

Brazilian labor law acknowledges an individual as an employee if he/she renders services to a company on a personal and habitual basis, with subordination and upon compensation.

The concept of employee is provided in section 3<sup>rd</sup> of the Brazilian Labor Code:

*Section. 3<sup>rd</sup> An employee is considered to be every person [natural person only] who renders services [on a personal basis] of a non transitory nature [habitual basis] to an employer, on its facilities [subordination] and through payment of salary [compensation].*

Both officer, services provider and employee render services on a personal and habitual basis and through monthly payment of compensation. Consequently, the main difference is whether he/she works under subordination or not.

Case law and scholars understand that the meaning of “subordination” is not based on objective criteria or facts. This subjectivity raised different understandings of the meaning of subordination. However, as a major understanding, there will be “subordination” when the worker must follow orders from another individual who is in a higher position in the company’s hierarchy.

Therefore, if the individual does not perform his/her activities with subordination to any other individual, he/she shall not be considered an employee of the company, to the extent that the main element of an employment relationship, i.e., subordination, would not exist.

### 3. EMPLOYMENT REGISTRATION

The hiring of an employee requires a registration on the “employment booklet” (Carteira de Trabalho e Previdência Social – “CTPS”), in which must contain information such as the employer’s name, date of hire, remuneration, job positions, salary increases, vacation periods and union dues. The registration of it is mandatory, under penalty of R\$ 3,000.00 per employee not registered, also applied in case of recurrence.

Similar annotations must be made in the company’s books.

## 4. BASIC LABOR RIGHTS

### a. Limit on working hours

The Federal Constitution sets forth that regular working hours are limited to eight hours per day and forty-four hours per week. However, the Brazilian Labor Code provides that the eight-hour work day may be extended to up to two hours per day.

It is important to point out that in certain occupations and professional categories the working hours are limited to six hours per day and thirty hours per week.

### b. Thirteenth salary or Christmas bonus

Employees are entitled, by law, to a thirteenth salary equivalent to the salary of December of each year. The payment is usually made in two equal installments, the first being accrued with vacation payment or in November and the second installment necessarily to be paid up to December 20th.



## **c. Vacation**

The Brazilian labor legislation determines that after twelve months of work (the “acquisition period”) employees are entitled to at least thirty days of vacation. The company decides when the employee will be on vacation, which must be within the twelve months immediately after the acquisition period.

The employee may choose to sell ten days of vacation to the company.

The company may split the vacation period in up to three periods, one of which may not be less than fourteen consecutive days and the others cannot be less than five consecutive days, each.

Moreover, Federal Constitution grants employees with a vacation bonus equivalent to one-third of the vacation payment.

## **d. Guarantee fund for length of service**

All companies shall deposit in an account named Guarantee Fund for Length of Service (Fundo de Garantia por Tempo de Serviço – “FGTS”) the amount equivalent to 8% of employees’ monthly remuneration. The respective amount is kept in this account and can only be withdrawn by the employee in special circumstances such as to buy a house, in case of serious illness and termination of the employment agreement without a cause.

## **e. Other benefits**

Collective Bargaining Agreements are binding and may grant additional labor rights and benefits to employees, such as annual salary increase, meal vouchers, food baskets, special prior notice etc. Benefits may vary depending on the business category and location of the company.

## 5. OVERTIME

In case the employees carry out overtime during business days (Monday to Saturday), overtime must be paid with an additional allowance of at least 50%. For work carried out on Sundays and holidays, the additional premium is equivalent to 100%.

However, the rates can be increased by collective bargaining agreements, employment agreement or as a result of the company's practices.

## 6. SEVERANCE PAYMENTS

According to Brazilian labor law any employee may be dismissed without a cause at any time, provided that the employee receives prior notice of thirty days and the due severance payment. The severance payment may vary according to the circumstances of the termination; however, if the employee is dismissed without cause, he/she shall be entitled to:

- (i)** Balance of due salary (for period worked);
- (ii)** Credit deposited in the FGTS account during the period he/she worked for her/his employer;
- (iii)** Fine corresponding to 40% of the total amount deposited in the FGTS account;
- (iv)** Prior notice of at least thirty days plus an additional three-day salary indemnification for each full year of employment up to the limit of 90 days;
- (v)** Accrued vacation based upon one month's compensation per year of employment. When termination occurs before the full year is completed, vacation time is calculated on a pro-rata basis;
- (vi)** Vacation bonus which must be equal to one-third of the amount due as accrued or regular vacation;
- (vii)** Christmas bonus which is equal to 1/12 of the employee's monthly compensation per month of employment (or a fraction of at least 15 days) counted from January 1st to the date of termination.

## 7. AMENDMENTS TO THE EMPLOYMENT AGREEMENT

The Brazilian Labor Code provides that an amendment to an employment agreement can only be made by written and mutual consent and if such amendment is not detrimental to the employee.



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